

RESPONSE TO RESTRICTION REQUIREMENT OF JUNE 21, 2005

Sir:

Applicant provides the following election in response to the Restriction Requirement dated June 21, 2005, in the above-captioned application. The Office Action of June 21, 2005, set forth restriction under 35 U.S.C. § 121 to purportedly distinct inventions. Applicant hereby provisionally elects **Group 7** (claims 27, 28, and 42), drawn to polypeptides comprising SEQ ID NO: 2 or polypeptides comprising the point mutation G45R of SEQ ID NO: 2 and compositions comprising polypeptides comprising the point mutation G45R of SEQ ID NO: 2 with **traverse**. Applicant reserves the right to file divisional application(s) directed to non-elected subject matter.

REMARKS

The Office Action requires that Applicant elect one Group from Groups 1-16. Applicant respectfully requests reconsideration of the Restriction Requirement in view of the following remarks concerning the election made herein.

Restriction between inventions is only proper when a search burden exists for the Examiner to search all the inventions claimed. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. See MPEP §803.01.

In the instant case, Groups 1-4 and 7-10 are drawn to the interferon α -17 nucleic acid, interferon α -17 polypeptide, and antibodies directed against the interferon α -17 polypeptide. The interferon α -17 nucleic acid (SEQ ID NO: 1) encodes the interferon α -17 polypeptide which is used to make the antibody, therefore all three products are inexorably linked by structure and function. It does not constitute a search burden to search for a single nucleic acid which encodes a single polypeptide which in turn has antibodies specific for it, as searching for one will lead to the other (MPEP §803.04). In addition, Groups 1-4 share the same class and subclass (536/23.5), Groups 5-6 share the same class and subclass (435/6), Groups 7 and 8 share the same class and subclass (530/300), Groups 9 and 10 share the same class and subclass (530/387.1), Groups 11-14 share the same class and subclass (514/2), and Groups 15 and 16 share the same class and subclass (435/7.1). Furthermore, Groups 1-6 and 15-16 all share the

same class (435). Therefore, it is evident from the overlapping subject matter and class/subclass that a search of Groups 1-16 does not constitute a serious search burden for the Examiner.

In view of the above remarks, Applicant respectfully requests that the Restriction Requirement be withdrawn and that all claims be prosecuted in the same patent application. At the least, Applicant respectfully requests rejoinder of Groups 1 and 7. In the event that the requirement is made final and in order to comply with 37 C.F.R. § 1.143, Applicant reaffirms the election with **traverse** of Group 7 (claims 27, 28, and 42), holding claims 1-26, 29-41, and 43-44 in abeyance under the provisions of 37 C.F.R. § 1.142(b) until final disposition of the elected claims.

CONCLUSION

Applicant maintains that the restriction requirement is improper and that all pending claims, *i.e.*, claims 1-44, should be examined for patentability. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's representatives, in person or over the telephone, we would welcome the opportunity to do so.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Dated: 9/29/05

By:



Christopher J. Nichols, Ph.D.
Registration No. 55,984

Robert M. Schulman
Registration No. 31,196

HUNTON & WILLIAMS LLP
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, DC 20006-1109
(202) 955-1500 (telephone)
(202) 778-2201 (facsimile)

RMS/CJN:cdh